

Amendments to the Drawings:

The attached sheet of drawings includes changes to Fig. 10. This sheet, which includes Figs. 10 and 11, replaces the original sheet including Figs. 10 and 11. In Figure 10, the “A” originally shown at the posterior region of the vertebrae was changed to “P”, and the “P” originally shown at the anterior region of the vertebrae was changed to “A”.

Attachment: Replacement Sheet

REMARKS

Claims 1, 3-18, and 23-27 are pending in the application with claims 1, 15, and 25 being the independent claims. Claims 15-18 are withdrawn. Claims 2 and 19-22 are canceled without prejudice to or disclaimer of the subject matter therein. Claims 1 and 3-7 are amended. Claims 23-27 are newly added.

Election of Species

The Office Action restricted the claims into three species:

Figs. 1-5 relating to claim 1-14,

Figs. 6 and 7 relating to claims 15-18, and

Fig. 8 relating to claims 19-22.

Based upon Applicant's telephone election with traverse, examination proceeded on claims 1-14, as disclosed in Figs. 1-5. The restriction requirement indicated that no claims are generic. However, claim 1 is generic to at least the groups of Figs. 1-5 and Figs. 6 and 7. Nevertheless, Applicant affirms the prior election of Figs. 1-5 and claims 1-14.

Amendments to Specification

Paragraphs 49, 52, and 53 of the specification are amended to correct reference numerals.

Amendments to the Drawings

The attached sheet of drawings includes changes to Fig. 10. In Figure 10, the "A" originally shown at the posterior region of the vertebrae was changed to "P", and the "P" originally shown at the anterior region of the vertebrae was changed to "A".

Rejections under 35 U.S.C. § 102

The Office Action rejected the claims under a number of references:

- a. claims 1-4, 6, 8, 10, and 13 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2003/0055427 to Graf;
- b. claims 1 and 5-8 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2003/0074076 to Ferree et al. ("Ferree");
- c. claims 1, 2, 4, 6-8, and 10 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,682,562 to Viart et al. ("Viart");
- d. claims 1, 3, 6, 8, and 12 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,733,532 to Gauchet et al. ("Gauchet");
- e. claims 1, 3, 6-8, and 14 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,626,946 to Eberlein et al. ("Eberlein"); and
- f. claims 1, 2, 4, 6-8, 10, and 11 were rejected under 35 U.S.C. § 102(b) as being anticipated by German Publication No. 2,263,842 to Hoffman-Daimler.

Claim 1

Claim 1 is directed to a disc replacement device. In particular, claim 1 recites:

A disc replacement device comprising:

a shell;

a fulcrum, wherein the fulcrum is a spherical ball bearing having a substantially spherical surface; and

a damping sleeve,

wherein the shell comprises:

a first surface adapted for articulating with the fulcrum, the first surface having a first surface shape different than the spherical surface; and

a second surface adapted for coupling with the damping sleeve, the first surface being separated from the second surface.

None of the references cited anticipates claim 1 because none discloses all the features of claim 1. Claim 1 is amended to include the subject matter of claim 2. None of Ferree, Gauchet, or Eberlein was applied as anticipating claim 2. Therefore, these references cannot anticipate amended claim 1.

Additionally, none of Viart, Hoffman-Daimler, or Graf discloses all the features of claim 1. For example, each of Viart and Hoffman-Daimler fails to disclose a disc replacement device having, for example, a shell having “a first surface adapted for articulating with the fulcrum, the first surface having a first surface shape different than the spherical surface.” Graf fails to disclose a disc replacement device having, for example, a shell having “a first surface adapted for articulating with the fulcrum” and “a second surface adapted for coupling with the damping sleeve, the first surface being separated from the second surface.”

Because each of the references fails to anticipate claim 1, Applicant respectfully requests that the rejections be withdrawn and claim 1 be passed to allowance.

Each of claims 3-8, 10, 11, and 14 depend from and add additional features to independent claim 1. Therefore, these claims should be allowable for at least the reasons that claim 1 is allowable. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection and allow these claims.

Claim 7

Claim 7 is amended to more particularly define its subject matter. It now recites:

The disc replacement device of claim 1 wherein the damping sleeve

comprises a cross-sectional shape that varies from one cross-section to another.

Claim 7 was rejected as being anticipated by Ferree, Viart, Eberlein, and Hoffman-Daimler. However, none of these appears to disclose a cross-sectional shape that varies from one cross-section to another. Therefore, claim 7 should be allowable over these references. Applicant respectfully requests that the Examiner withdraw the rejections of claim 7.

Rejections Under 35 U.S.C. §103

The Office Action indicated that claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Viart in view of U.S. Patent No. 6,402,785 to Zdeblick et al. and that claim 12 is rejected as being unpatentable over Gauchet in view of U.S. Patent No. 6,770,094 to Fehling et al. These claims each depend from and add additional features to independent claim 1. Therefore, these claims should be allowable for at least the reasons that claim 1 is allowable. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection and allow these claims.

New Claims

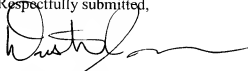
Claims 23-27 are newly added. Claims 23-26 depend from claim 1 and claim 27 is independent. Applicant respectfully requests that the Examiner consider and allow these claims.

Conclusion

For at least the reasons set forth above, independent claim 1 is in condition for allowance. Dependent claims 3-14 depend from and add additional features to independent claim 1 and, therefore, also are in condition for allowance. Applicant submits that new claims 23-27 are also in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner withdraw the outstanding rejections and issue a formal notice of allowance.

Please grant any extension of time required to enter this response and charge any additional required fees to our Deposit Account No. 08-1394.

Respectfully submitted,



Dustin T. Johnson
Registration No. 47,684

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HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 972/739-6969
Facsimile: 214/651-5940
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Certificate of Service

I hereby certify that this correspondence is being filed with the U.S. Patent and Trademark Office via EFS-Web on October 18, 2006.

Bonnie Boyle
Bonnie Boyle